IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4085 of 1997

Smt.Ushadevi Rajendra Yadav
Adult, Occ:business having
address at Shop 3, Pathan
Chawl, Akurli Road,Hanuman
Nagar, Kandivli(E),
Mumbai 400 101. .. Petitioner.

versus

1. The State of Maharashtra
Mumbai (Notice be served on Addl.
Govt.Pleader, High Court,A.S.
Mumbai

2. The Controller of Rationing,
Mumbai having office at Royal
Insurance Bldg, 5th floor,
14,J. Tata Road, Churchgate,
Mumbai 400 020.

3. The Hon’ble Minister,Food
& Civil Supplies Department
Mantralaya, Mumbai.

4. Shri Sureshkumar D.Gupta
adult,resding at Hanuman Nagar,
Akurli Road, Kandivli(E).Mumbai.

5. Sadanand N. Mohita, adult
residing at Ganesh Chawl committee
Municipal School, Hanuman chawl,
Kandivli(E), Mumbai. .. Respondents

...

Mr.Sanjay T. Manek for the petitioner.

Ms.P.S. Cardozo AGP for respondent nos.1, 2 & 3.

CORAM : Smt.Ranjana Desai &
A.P. Deshpande, JJ
DATED : 24th July 2006.

ORAL JUDGEMENT : (Per A.P.Deshpande,J)

1. By this petition, the petitioner questions the legality and validity of an order passed by the concerned Minister for Food and Civil Supplies rejecting the revision filed by the present writ petitioner.

2. The Government had published an advertisement sometime in July 1995 inviting applications from persons desirous of obtaining a fair price shop. The present petitioner along with respondent nos.4 and 5 and others had applied for allotment of a fair price shop with location within the stipulated boundaries at Hanuman Nagar, Kandivli (East). In all seven

applications were received pursuant to the advertisement and the same were scrutinised by the Dy. Controller of Rationing, and based on that report the Controller of Rationing, Mumbai passed an order granting a fair price shop in favour of the respondent no.4 Shri Suresh Kumar Gupta. In so far as the present petitioner is concerned, the claim was rejected having regard to the fact that in the first place, the petitioner had failed to establish the ownership/possessory rights qua the premises and secondly, for the reason that on account of the construction of a nalla wall at the rear of the shop, the wall at the rear of the premises was completely pulled down. A reading of the order reveals that what weighed with the authority concerned in so far as the petitioner's application is the unsuitability of the premises on account of it being located at the nalla and the premises being in dilapidated condition having no rear wall. The revisional authority as well, has concurred with the finding of fact recorded by the Controller of the Rationing in holding that the premises proposed by the petitioner for using the same as fair price shop were found to be unsuitable.

3. Learned counsel for the petitioner submits

that not only the petitioners premises were unsuitable but the same was also the case of the respondent no.5's premises. Perusal of the report reveals that the first authority had objected to the grant of fair price shop in favour of respondent no.5 for two different reasons i) that an authorised fair price shop has been sanctioned in favour of the brother of respondent no.5 and ii) that the premises are not in actual possession of the respondent no.5. In regard to the respondent no.5, the objections are over-ruled by the Revisional Authority and an order has been passed for allotting a fair price shop in his favour way back in the year 1996. Respondent nos.4 and 5 are running a fair price shop since last about 10 years in view of the orders by the Controller and the revisional order. We do not find any illegality committed by the Controller so also the revisional authority in rejecting the claim of the petitioner on account of the unsuitability of the premises. Hence the Writ Petition deserved to be dismissed. Though we are not very much convinced about the reasons recorded in the revisional order for grant of fair price shop in favour of respondent no.5, in view of the fact that the respondent no.5 is running the said shop for last about 10 years coupled with the fact that the

petitioner has failed to establish his eligibility for granting the fair price shop, we decline to interfere with the impugned order in exercise of extra ordinary writ jurisdiction.

4. In the result, there is no merit in the petition. The same is dismissed with no order as to costs.

(SMT.RANJANA DESAI)

(A.P.DESHPANDE)